(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

W.P.NO. 220 /2002

1) B.D. Thakur, S/o. Late Bal Krishna Thakur, aged about 55 years, R/o. Kurud Road, Kohka, Sushila Niwas, PO Kohka, Distt. Durg (CG) (ELECTRICIAN N.5, PN 22405, VR DTD. 9/6/2000)

2) S.P. Mishra, S/o. Late Gulab Mishra Aged about 51 years, R/o. Atr. No. 1/I, Road No. 88, Sector 6 Bhilai, Post Office Bhilai Tahsil and Distt. Durg (Chhattisgarh) (ELECTRICIAN N.5 P.NO. 16645)

3) N.K. Shah, S/o. Late G.B. Shah, aged about 53 years, R/o. Newayee Laxmi Near Pashu Aahar, P.O. Newayee, Tah and Distt. Durg (Chhattisgarh). (RIGAR N.4 P.N. 11614)

4) B.N. Ram, S/o. Late Shivbachan Ram aged about 50 years, R/o. Shankar Ration Shop, C/o. Shiv Mandir, K.L.C. Zone, Zone No. 3, Bhilai, Tah. And Distt. Durg (Chhattisgarh) (RIGAR N. 4 P.N. 16944)

5) Sabhadas, S/o. Late Bhikhari Das,, aged about 45 years, R/o. Village Maroda Station, H.S.C.L. Colony, Prakash Medical Store, Post Newayee, Distt. Durg (Chhattisgarh) SENIOR HELPER N.2 P.N. 13543)

Recd. one Advance copy on 24/1/02
for A.S. Gohaswar
Sr CGSC

PETITIONERS

VERSUS

1) Union of India,
Through : The Secretary,
Government of India
Ministry of Steel Industries,
Udyog Bhawan,
New Delhi

P.R. No. 2/5/02
Shri S.P. Mishra
24/1/02

2) The Secretary
Government of India,
Ministry of Labour
Udyog Bhawan
New Delhi.

3) Chief Managing Director,
Hindustan Steel Works Construction Limited
8th Floor, Calcutta.

4) General Manager,
Hindustan Steel Construction Limited
Bhilai, Distt. Durg.

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF CONSTITUTIONS OF INDIA

(82)

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आदेश पत्रक

मामला क्रमांक W.P.220/ **सन्** 2002

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	27-4-2005 Mr. P.P. Sahu, counsel for the petitioners. Mr. Raghavendra Pradhan, Standing Counsel for Union of India/ respondents No.1 & 2. Mr. P.S. Koshy, Advocate with Mr. Vinod Deshmukh, counsel for respondents No.3 & 4. Heard on I.A.No.1737/2004, application for amendment. I.A.No.1737/2004 is allowed. Counsel for the petitioners to file amended petition by tomorrow 10:30 a.m. List tomorrow at 2.30 p.m. along with other connected matters **Sd/-** **L.C.BHADOO** **Judge**	

Soma

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक W.P. ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	28.4.2005 Mr. B.R. Ghosh, counsel for the petitioner in W.P. No.2/2001. Mr. D. Shashidharan, Advocate with Shri C.R. Sahu, Advocate for the petitioners in W.P. Nos.3081/2000, 4205/2000, 5569/2000, 5571/2000, 51/2001, 54/2001, 55/2001, 102/2001, 205/2001, 468/2001, 1847/2001, 1261/2002, 1379/2002 & 1542/2002. Mr. P.P. Sahu, counsel for the petitioners in W.P. Nos.220/2002, 431/2002, 744/2002 & 1354/2002. Mr. Thakur Vijay Singh, Assistant Solicitor General of India for respondent No.1 in all the writ petitions. Mr. V.V.S. Murthy, Sr. Counsel for respondent No.2 & 3 in W.P. Nos.431/2002, 744/2002 & 1379/2002 and in rest of the aforementioned petitions Mr. P.S. Koshy, Advocate with Mr. Vinod Deshmukh, counsel for respondent No.2 & 3. As all these petitions relate to those employees who took the voluntary retirement under the Voluntary Retirement Scheme introduced by respondent No.2 & 3 vide HO circular No. GM (P&A)/ESTT/16/88 dated 10.11.1988, HO Circular No. PER /RR/531/M-7221 dated 18th/19th 11.1993. & HO Circular No. PER/RR/331 dated 28.6.1995, which was extended from time to time upto year 2000, relief claimed by the petitioners in these petitions are covered by the points raised in W.P. No.2/2001, therefore, these petitions are being disposed of by this common order.	

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आदेश पत्रक

मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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At the outset it may be mentioned that respondent No.2 & 3 have not denied the admissibility of the benefits to the petitioners, but their case is that respondents concern is running in loss and due to financial crunch they introduced voluntary retirement scheme for reducing the workmen force in order to reduce the financial burden. In the return of respondent No.2 & 3 it has been mentioned that respondents have never denied benefits to its employees but because of paucity of funds the benefits of salary and wages cannot be given in full extent.

The first claim made by the petitioners is that they are entitled for the arrears of 5th Pay Commission from 1.1.1996 to 31.12.1997. Learned counsel for the petitioners submits that employees of respondent No. 2 & 3 were given benefits of 4th Pay Commission and thereafter, 5th Pay Commission was given to all Public Undertakings w.e.f. 1.1.1996 and in this connection a circular dated 20.1.1998 (Annexure P-1) was issued. Since the employees of respondent No.2 & 3 fall under the Central Dearness Allowance (C.D.A.), they are also eligible for 5th Pay Commission from 1.1.1996, but the employees of Bhilai Unit working under respondent No.3 have been allowed the said benefits only from 1.1.1998 and have been deprived of the said benefits for the period from 1.1.1996 to 31.12.1997.

Mr. Koshy, counsel for respondent No.2 & 3 submits that except arrears for this period i.e. from 1.1.1996 to 31.12.1997 all the dues have been paid to the petitioners.

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In this connection, if we look into the Annexure P-2 dated 10.11.1988, at the time of introduction of voluntary retirement scheme the employees of respondent No.2 & 3 were informed that they will be paid all the benefits as mentioned in the circular including the CPF, Earned Leave encashment as per rules of the Company, gratuity, salary for the notice period and T.A. equivalent to actual fare of the class by Rail to which the employees is entitled for self and family proceeding to recorded home town and reimbursement of actual expenditure incurred for transportation of personal effect as per T.A. Rules.

Since the respondent company is running in loss that is why the Central Government came forward for financial assistance to the respondents-Company and as informed by Mr. Murthy that in the first instance Rs.79.99 crores non-plan loan was sanctioned by the Central Government in the year 1999-2000 to meet the liability of statutory dues granted in 1999 as part of comprehensive revival package, thereafter, a non-plan loan of Rs.89.44 crores granted in the year 2001-02 to meet the liability of statutory dues to separated employees and similarly, a non-plan loan of Rs.61.11 crores granted in the year 2002-03 for payment of dues to the employees of respondent HSCL. Accordingly, the Central Government has granted so much financial assistance to the respondent-Company in order to make the payment of separated employees as comprehensive revival package and the petitioners sought voluntary retirement, as per respondent company's scheme, contributed towards the company for reduction in the workmen,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

therefore, respondent No.2 & 3 should not ignore the sacrifice made by the petitioners by seeking voluntary retirement. Thus, in my opinion, in view of all the above facts the petitioners are entitled for the benefit of 5th Pay Commission and also the benefit of arrears for the period from 1.1.1996 to 31.12.1997 as claimed by the petitioners, as the petitioners are a class separate because they have took the voluntary retirement and being retired employees they required some financial assistance for their settlement after their retirement. The employees, who are still working, are getting their salaries but the retired employees are wholly dependant on the retiral benefits whatever they received. Particularly when respondent No.2 & 3 have been rendered financial assistance by the Central Government, they are under obligation to pay the arrears of 5th Pay Commission to the employees who took the voluntary retirement as per the scheme introduced by the respondent No.2 & 3. As such, it is directed that respondent No.2 & 3 shall pay the arrears of 5th Pay Commission to the petitioners for the period 1.1.1996 to 31.12.1997, as claimed by the petitioners.

Now, coming to the second point raised by the counsel for the petitioners regarding D.A., which was 38% up to 31.6.2000 and ultimately increased to 41% from 1.7.2000, as mentioned in Clause (b) of Paragraph No.4 of the petition. Counsel for the petitioners' contention is that till 30.6.2000 the petitioners were paid 22% DA only, whereas they were entitled for the increased DA. As against this Mr. Koshy submits that as per circular of

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ministry of Steel dated 14.7.1999 (Annexure R-2) made effective from 1.4.1999 the additional D.A. was frozen on account of financial crunch and loss to the company. In this connection, again I would like to mention the same point which has been mentioned in the earlier part of this order that as far as the working employees are concerned, it may be legal but for the retired employees who took the voluntary retirement and they are wholly dependent upon the retiral benefits and looking to the contribution of these persons by coming forward for seeking voluntary retirement in order to contribute for reduction of the workmen in the company so as to reduce the financial burden on the company, respondent No.2 & 3 are expected to more generous towards these employees, as after their retirement only retiral benefits are the money on which they can prolong their life. Therefore, respondent No.2 & 3 should pay the DA at the increased rate to the petitioners till the date they took voluntary retirement. Mr. Koshy tried to raise the point that some of the employees approached the Hon'ble Apex Court under Article 32 of the Constitution of India for directing the respondent Company to release the DA etc and he has submitted that said petition has been dismissed by the Hon'ble Apex Court with the direction that the petitioners would be at liberty to approach the respondent Company for increase of DA in terms of the scheme in case the company earns profit. But again in my humble opinion it applies to the working employees only and the petition was also filed by the working employees. As mentioned earlier that the petitioners

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..... **विरुद्ध** .....

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herein are a class separate, they are retired employees, therefore, respondent No.2 & 3 even after getting financial assistance from the Central Government they are not paying to these employees, therefore, they should pay the DA increased from time to time by the Central Government to the petitioners till date of their retirement.

As far as the point with regard to the increase of House Rent Allowance is concerned, the reply of respondent No.2 & 3 is that increased HRA could not be paid to the employees on account of paucity of funds. But when respondent Company has been directed to pay the increased DA, as such the petitioners are also entitled for increased HRA. Therefore, it is held that respondent No.2 & 3 should pay the increased HRA to the petitioners as per rules.

The other point raised by learned counsel for the petitioners is that in some cases the petitioners have opted for voluntary retirement in the month of August 1999 but they continued in services till June, 2000, but the salary for this intervening period i.e. from 1.9.1999 till their actual date of retirement has not been paid to them. In this respect, Mr. Koshy submits that payment has already been made and the petitioners' counsel also concedes that payment has already been received.

As far as other allowances i.e. actual allowance incurred by the petitioners for transportation of their luggage, self-travelling allowance alongwith their dependent family members to reach their declared home-town & settlement allowance are concerned, in this

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

connection Mr. Koshy submits that Accounts Department has taken an objection that employees are claiming transportation of their luggage, self travelling expenses & settlement allowance on forged bills without settling at their declared home town and even some of the employees were retaining the company's quarters.

Mr. Shashidharan, counsel for the petitioners argued that the employees are entitled for settlement allowance even if they decide to settle at some other place than the declared home town.

Having heard learned counsel for the parties and having regard to the facts in case, this is the normal practice that when an employee retires he is entitled for transportation charges, travelling charges for himself and his dependent family members to reach his declared home town, therefore, respondent No.2 & 3 are directed to pay the petitioners travelling allowance for the employee himself along with dependent members of his family, transportation of house holds and settling allowance as per actual expenses incurred in that respect by the employees upto the extent admissible under the rules. It is made clear that these allowances will be admissible to the petitioners after satisfying the respondents about incurring of those expenses and in this connection before making payment respondents can ask for tickets of the travelling and also the receipt of transportation. They will also be entitled to have their satisfaction that the employee has actually settled at the declared hometown.

As far as the claim regarding medical facility is concerned, the main grievance of the petitioner is that the medical facility was

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

given to them as per 4th Pay Commission, whereas it ought to have been given as per 5th Pay Commission. In this respect having considered the point raised by learned counsel for the petitioners, I am of the opinion that it is appropriate to direct the respondents that in case any employee incurred any medical expenses admissible to him before the retirement as per medical rules and then they are entitled for the difference on account of the rules of pay revision in pursuance of 5th Pay Commission on satisfying by the concerned employee about the incurring of that expenses difference between 4th Pay Commission & 5th Pay Commission, if any, be paid to the petitioners.

As far the claim of the petitioners regarding Leave travel concession (LTC) is concerned, as the respondents company is already running in loss and Central Government has also from time to time restricted the LTC entitlement of the employees, I am of the opinion that looking to the financial crunch of the respondent Company it is not appropriate to grant this relief to the petitioners, moreover, they have already been retired and also in view of the fact that in the case of DA inspite the fact that DA has been frozen the petitioners have been granted increased D.A. by this order. Hence, this claim cannot be allowed.

As far as the last claim of the petitioners regarding benefit of additional privilege of Earned Leave (EL) and Half Pay Leave has been curtailed is concerned, counsel for the petitioners argued that the benefit of earned leave and half pay leave, which was admissible to the petitioners under Annexure P-2 whereby the

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employees were offered voluntary retirement scheme has been curtailed by Circular Annexure P-4 dated 28.8.2000 with retrospective effect. Again in my opinion, curtailment of this benefit with retrospective effect cannot be considered to be valid. In the first place the petitioners took the voluntary retirement in pursuance of the scheme introduced by the respondent company for reduction of the workmen force and on the other hand curtailment of the benefit of earned leave and half pay leave with retrospective effect vide Circular Annexure P-2 dated 28.8.2000 by the respondent Company is contrary to the spirit of circular Annexure P-2. Therefore, in my opinion the respondents are not entitled to curtail the benefit of earned leave & half pay leave till 27.8.2000, however, that can be made effective in the cases where the retirement has been effected w.e.f. 28.8.2000. Accordingly, respondents are directed to give benefit of encashment of Earned Leave & Half Pay Leave to the petitioner as per rules up to 27.8.2000 as per the prevailing scheme up to that date.

Mr. Shashidharan, counsel for the petitioners submits that apart from these claims in some cases respondents are charging more license fee of the quarters, which are provided to the employees by the respondent No.2 & 3 in comparison to the outsiders to whom the company has also provided the quarters. He further submits that in some of the case some employees incurred expenses in respect of special diseases, which were not to be recovered from the employees concerned, but the same have been recovered from the dues payable to the employees.

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	As far as these points are concerned, the petitioners are at liberty to avail the separate remedy as admissible under the law. In the result, for the foregoing reasons, the respondents are directed to make the payments to the petitioners in light of the aforesaid directions given by the Court as early as possible but not later than six months from today, as most of the petitioners took their retirement 5 to 6 years back and they are waiting for their retiral dues. Writ Petitions stand disposed of in terms of the above order. Certified copy as per rules. Sd/- L.C.BHADOO Judge	

Roshan/-

(पीछे देखिये)